

# THE FAIR CHANCE AT HOUSING ACT OF 2016

## **- RANKING MEMBER MAXINE WATERS -**

This bill is supported by the following organizations: the National Low Income Housing Coalition (NLIHC), the National Fair Housing Alliance (NFHA), CSH, the National Housing Law Project (NHLP), the National Alliance to End Homelessness (NAEH), the National Law Center on Homelessness and Poverty (NLCHP), the Sargent Shriver National Center on Poverty Law, the Lawyers' Committee for Civil Rights (LCCR), the National LGBTQ Task Force Action Fund, the Consortium for Citizens with Disabilities, and the National Disability Rights Network.

### **Section-by-Section:**

#### **Section 1. Short Title**

#### **Section 2. Definition of Covered Criminal Activity**

This section would define “covered criminal activity” to limit public housing authorities (PHAs) and owners so that they may consider criminal activity that would threaten the health, safety or right to peaceful enjoyment of others.

#### **Section 3. Screening of Applicants for Federally Assisted Housing**

*This Section applies to all HUD-assisted housing.*

Currently, 42 U.S.C. §13661 establishes a mandatory screening criteria for PHAs and owners of housing assisted by the Department of Housing and Urban Development (HUD), which prohibits eligibility for: (1) persons who have been evicted from federally-assisted housing as a result of drug-related criminal activity within the past three years; and (2) persons who the PHA or owner determines is using illicit drugs. In the latter instance, PHAs and owners may, but are not required to, consider rehabilitation. There are no federal statutory minimum evidentiary standards for PHAs or owners to comply with before making a determination, and this system can prevent persons who are evicted for drug-use, fairly or unfairly, from reuniting with their family living in public housing.

This section would raise the standards of evidence that PHAs and owners use when making screening determinations based on criminal activity, and require an individualized review of the totality of the circumstances before denying an applicant. It would require that PHAs and owners provide written notice to applicants of their screening policies, and if an applicant is denied, provide written notice of the reasons for the denial and the options for the tenant to appeal. If a PHA or owner decides to deny admission based on criminal activity, they must give the applicant the option to remove the culpable member of the household rather than subjecting the family to a blanket denial.

#### **Section 4. Requirements for Termination of Tenancy and Assistance for Covered Criminal Activity by Tenants of Federally Assisted Housing**

*This Section applies to all HUD-assisted housing.*

Currently, 42 U.S.C. §13662 requires PHAs and owners to establish policies that allow for the eviction of households that include a member who is using illicit drugs. PHAs and owners *may*, but are not required, to consider rehabilitation. This section would limit evictions based on criminal activity to only criminal activity that would threaten the health, safety or right to peaceful enjoyment of others. It would require PHAs and owners to conduct an individualized review of the totality of the circumstances when considering the eviction of a tenant based on criminal activity. If a PHA or owner decides to evict based on criminal activity after a thorough review, the household must be given the option to remove the culpable member rather than subjecting the entire household to eviction.

This section would also prohibit the use of suspicionless drug or alcohol testing of applicants as a condition of receiving assistance.

## **Section 5. Data Collection**

To address the dearth of data on evictions and screening decisions nationwide, this section would require PHAs and owners to report specific data on applications denied on the basis of criminal activity and on evictions for criminal activity on an annual basis to HUD.

## **Section 6. Public Housing Eviction Standards**

*This Section only applies to public housing.*

Currently, 42 U.S.C. §1437d(k) establishes an expedited grievance procedure that PHAs may use in certain situations. This expedited grievance procedure provides tenants with fewer rights to challenge the eviction decision. This section of the bill would limit the use of the expedited grievance procedure to violent criminal activity.

§1437d(k) requires PHAs to include a mandatory lease provision for public housing that allows for “no fault” evictions, wherein tenants can be evicted for the drug-related criminal activity of a guest without the knowledge of the tenant. This section would modify this lease provision to clarify that the actions of guests of tenants are only grounds for eviction if the guests were acting with the tenant’s knowledge. This section would also eliminate a mandatory lease provision that stipulates that a violation of parole is grounds for eviction.

Under §1437d(k), a PHA can require each applicant for public housing to sign a written consent, authorizing the PHA to receive information from a drug abuse treatment facility related to whether the applicant is currently engaging in the use of a controlled substance. This authority raises concerns about violating the privacy of an individual’s rehabilitation efforts and disincentivizing an individual from seeking treatment in the first place. This section would eliminate this authority while preserving the applicant’s ability to provide such information voluntarily.

Under §1437d(k), a PHA can permanently ban a non-tenant from visiting a public housing development on the basis of criminal activity without evidence, without notice, and without providing any opportunity for appeal. This has had the result of keeping families apart, and has even resulted in family members not being able to come home for the holidays. This section would ensure that PHAs can only ban a non-tenant from visiting a public housing development after an individualized review of the totality of the circumstances, and requires PHAs to give adequate notice of the agency’s decision, which includes the basis for the prohibition and the right to present mitigating evidence. In the case of a prohibition, there is opportunity for the tenant or guest to request a redetermination once a year, and the prohibition will expire after three years.

This section would ensure that any public housing units that are managed by a private company are subject to the same screening and evictions policies that the PHA would otherwise be subject to, including units managed by Moving to Work (MTW) PHAs, and units being converted through the Rental Assistance Demonstration (RAD).

## **Section 7. Termination of Tenancy and Tenant Selection under Section 8 Rental Assistance Program.**

*This Section only applies to Section 8 programs.*

Currently, 42 U.S.C. §1437f(d)(1)(B)(iii) requires mandatory lease provisions for the Section 8 Housing Choice Voucher (HCV) and Project-Based Rental Assistance (PBRA) programs that are similar to those for public housing discussed above. This section would make the same amendments to these provisions that are described above.

For the HCV program, 42 U.S.C. §1437f(o)(6)(B) permits PHAs to establish elective screening, which establishes additional policies or procedures above and beyond screening that is otherwise required by statute or regulation. This section would require that any elective screening criteria be directly related to an applicant’s ability to fulfill the terms of the lease, and that any applicant deemed ineligible due to elective screening be notified of such

determination and provided with a timely opportunity for an informal hearing, including the opportunity to present mitigating circumstances. It would also prohibit PHAs from applying elective rescreening to families who are already receiving some form of housing assistance.

Once a PHA determines that a tenant is eligible for assistance, §1437f(o)(6)(B) also authorizes private owners participating in the Section 8 HCV program to establish their own screening procedures when determining whether to lease to a voucher-assisted tenant. This section would require that any owner that screens applicants based on criminal background must provide written notice to applicants of the policy and the applicant's right to present mitigating evidence.

Under 42 U.S.C. §1437f(q)(2)(B), HUD can pay additional administrative fees to PHAs for serving "hard to house" families, as defined by the Secretary. This section would clarify that persons who have exited jail or prison should be considered "hard to house."

### **Section 8. Screening and Termination of Tenancy in Rural Housing Programs**

This section would direct the Secretary of Agriculture to revise its regulations regarding screening and eviction procedures for its rural housing programs after consulting the Secretary of HUD to ensure they are consistent with the revised HUD regulations.

### **Section 9. Continuum of Care Program under McKinney-Vento Homeless Assistance Act.**

*This Section only applies to the Continuum of Care (CoC) program.*

Currently, 42 U.S.C. §11386a(b)(1)(B) requires recipients of CoC funds to develop plans for determining how they will use their federal homeless assistance funds. This section would require that the plan describe how the CoC boards will collaborate with local criminal justice systems to create pathways to housing for those cycling between homelessness and incarceration.

This section would also authorize \$10 million to provide bonuses or other financial incentives for applicants proposing innovative housing solutions for ex-offenders.

### **Section 10. Regulations**

This section gives the Secretary of HUD the authority to issue any regulations necessary to carry out the provisions in this bill.

### **Section 11. Effective Date**

This section stipulates that the effective date of this Act will be 180 days from enactment.